

it shall be sufficient that a bond has been accepted and filed in the county in which the deed has been first recorded.

This section makes void the sale of property under a deed of trust to secure an issue of bond unless the trustee gives bond, and the filing of the bond after sale and before ratification, does not cure the defect. Trust Company held not exempt by its charter (from giving bond), its appointment as trustee being under a deed. *Union Trust Co. v. Ward*, 100 Md. 99. And see *Real Estate Co. v. Union Trust Co.*, 102 Md. 46.

Where a sale is set aside on account of the failure of the trustee to give a bond as required by this section, the expenses of said sale must be borne by the trustee if the omission to give the bond was due to its negligence; *contra* if the trustee acted prudently and under the advice of reputable counsel. *Real Estate Co. v. Union Trust Co.*, 102 Md. 45.

See notes to sec. 243.

1904, art. 16, sec. 223. 1900, ch. 123. 1910, ch. 122 (p. 62).

239. All sales heretofore made, and all deeds, demises and other instruments of writing, granting and conveying real, personal or mixed estates heretofore executed and delivered by the trustee or trustees to whom any estate, real, personal or mixed had heretofore been limited and conveyed for the benefit of creditors, or to be sold for any other purpose; or as security for debt, or to be sold upon a contingency, and who gave bond with but one surety, shall be and the same are hereby made valid and effective to pass title and valid to all intents and purposes, as if the said bond given by the said trustee or trustees had had two sureties or more thereon, as required by section 237, or section 238, of article 16, Annotated Code of Public Civil Laws of Maryland; provided, that such trustee or trustees has or have complied with all the other requirements of law, and such sales, deeds, demises and other instruments of writing are in conformity with the law; provided that such sales have been ratified; and provided further, that nothing in this section shall affect the interest of *bona fide* purchasers and incumbrances without notice, and creditors who may have become such prior to April 5, 1910; and provided, nevertheless, that nothing in this section shall operate to divest any lien or claim upon property passing under such trustee's deed which may now exist, or which may hereafter arise, for the benefit and protection of any *cestui que trust*, the purchase money may not have been properly applied.

Ibid. sec. 224. 1888, art. 16, sec. 206. 1874, ch. 483, sec. 108.

240. Where upon an investigation of the circumstances of the case, the circuit court for the county, or circuit court or circuit court No. 2 or superior court of Baltimore city shall be satisfied that it would be improper to require a bond to be given for double the amount of the property placed in the hands, or made subject to the disposition of said trustee, the court may prescribe the amount of the bond to be given by such trustee.

This section referred to in construing section 237—see notes thereto. *Philbin v. Thurn*, 103 Md. 348.

Article 81, section 117, of the code of 1860 (analogous in its provisions to this section), cited but not construed in *Sixth Ward Bldg. Assn. v. Willson*, 41 Md. 512.